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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/054,068	01/22/2002	David Boyd Melvin	CCX-103US2	7331
23122	7590	10/04/2004	EXAMINER	
RATNERPRESTIA			ISABELLA, DAVID J	
P O BOX 980			ART UNIT	PAPER NUMBER
VALLEY FORGE, PA 19482-0980			3738	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

mt

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/054,068	MELVIN, DAVID BOYD	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID J ISABELLA	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-57 is/are pending in the application.
- 4a) Of the above claim(s) 28-30, 34-36, 39, 40, 42-47, 49-51, 54 and 57 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-33 is/are allowed.
- 6) ☒ Claim(s) 27, 37, 38, 41, 48, 52, 53, 55, 56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Status of the Claims***

Claims 27-57 are pending in the application. Claims 28-30,34-36,40,42-47,49-51,54,57 remains withdrawn from consideration as being drawn to non-elected invention/species.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27,37,38,55,56 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuzmak et al (4592339).

Kuzmak discloses a device for deforming an organ, said device comprising: a first member (14) configured to be positioned adjacent an exterior surface of said organ and to selectively deform said organ by applying pressure to said organ, and a second member coupled to said first member, wherein said second member (26) is configured to restrict free movement of said organ and to provide resistance against the pressure applied by said first member to said organ. (See figure 2)

Claim 37, the device of Kuzmak comprises an elongate first member (14) configured to be positioned adjacent said organ along a line encircling a portion of an exterior surface of said organ and to selectively deform said organ by applying inward pressure to said organ along a limited segment of said line; and a second member (26) coupled to said first member, wherein said second member is configured to be

positioned adjacent a portion of an exterior surface of said organ substantially opposite said first member to provide resistance against the pressure applied by said first member to said organ.

Claim 38 is interpreted as requiring the limited segment having a predetermined length.

Claim 56, the inflatable surface of Kuzmak would be adaptable to provide equalized pressure over the irregularities of the organ's surface.

Claims 41,48,52,53 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuzmak et al (4592339).

Claims 41,48 ,52,53, the device of Richards comprises a comprising at least two opposing members configured to be positioned adjacent portions of an external wall of a organ of said natural heart and adapted to apply an indentation against at least one point on said external wall, and a connecting structure adapted to connect and restrain said members in a position indenting at least one point on said external wall. (See figures 11,15 and 17)

Claim 53, the smooth surface of Kuzmak would be adaptable to provide equalized pressure over the irregularities of the organ's surface.

***Allowable Subject Matter***

Claims 31-33 are allowed.

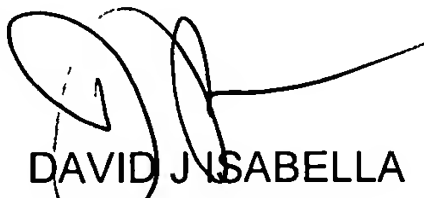
***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
September 30, 2004